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S. 377

To require negotiation and appropriate action with respect to certain countries that engage in currency manipulation.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. LIEBERMAN introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To require negotiation and appropriate action with respect to certain countries that engage in currency manipulation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Currency Enforcement Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The manufacturing sector is an important driver of the United States economy, contributing almost 30 percent of our economic growth during the

1990's, and twice the productivity growth of the service sector during that period.

(2) The manufacturing sector contributes significantly to our Nation's development of new products and technologies for world markets, performing almost 60 percent of all research and development in the United States over the past two decades.

(3) The manufacturing sector provides high quality jobs, with average weekly wages between 20 and 30 percent higher than jobs in the service sector.

(4) The manufacturing growth creates a significant number of jobs and investments in other sectors of the economy, and this ''multiplier effect'' is reckoned by economists to be larger (2.43 to 1) than for any other significant sector of the economy.

(5) The ''jobless recovery'' from the recent recession has witnessed the worst job slump since the Great Depression and the weakest employment recovery on record.

(6) The manufacturing sector has been hit the hardest by the jobless recovery.

(7) A significant factor in the loss of valuable United States manufacturing jobs is the difficulty

faced by United States manufacturers in competing effectively against lower priced foreign products.

(8) A significant obstacle to United States manufacturers in competing against foreign manufacturers is the practice of some governments of intervening aggressively in currency markets, or pegging their currencies at fixed rates, to maintain their own currencies at artificially low valuations, thus subsidizing their export sales and raising price barriers to imports from the United States.

(9) Certain Asian countries exemplify this practice. China, Japan, South Korea, and Taiwan together have accumulated approximately ½ of the world's total currency reserves. The vast majority of these reserves, perhaps as high as 90 percent, are in dollars. These same 4 countries account for 60 percent of the United States world trade deficit in manufactured goods. These reserves are symptomatic of a strategy of intervention to manipulate currency values.

(10) The People's Republic of China is particularly aggressive in intervening to maintain the value of its currency, the renminbi, at an artificially low rate. China maintains this rate by mandating foreign exchange sales at its central bank at a fixed ex-

change rate against the dollar, in effect, pegging the renminbi at this rate. This low rate represents a significant reason why China has contributed the most to our trade deficit in manufactured goods.

(11) Economists estimate that as a result of this manipulation of the Chinese currency, the renminbi is undervalued by between 15 and 40 percent, effectively creating a 15- to 40-percent subsidy for Chinese exports and giving Chinese manufacturers a significant price advantage over United States and other competitors.

(12) The national currency of Japan is the yen. Experts estimate that the yen is undervalued by approximately 20 percent or more, giving Japanese manufacturers a significant price advantage over United States competitors.

(13) In addition to being placed at a competitive disadvantage by foreign competitors' exports that are unfairly subsidized by strategically undervalued currencies, United States manufacturers also may face significant nontariff barriers to their own exports to these same countries. For example, in the past in China, until remediated, a complex system involving that nation's value added tax and special tax rebates ensured that semiconductor devices im-

ported into China were taxed at 17 percent while domestic devices are effectively taxed at 6 percent.

(14) The United States has the right and power to redress unfair competitive practices in international trade involving currency manipulation.

(15) Under section 3004 of the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to determine whether any country is manipulating the rate of exchange between its currency and the dollar for the purpose of preventing effective balance of payments adjustments or gaining unfair advantage in international trade. If such violations are found, the Secretary of the Treasury is required to undertake negotiations with any country that has a significant trade surplus.

(16) Article IV of the Articles of Agreement of the International Monetary Fund prohibits currency manipulation by a member for the purposes of gaining an unfair competitive advantage over other members, and the related surveillance provision defines "manipulation" to include "protracted large-scale intervention in one direction in the exchange market".

(17) Under Article XV of the Exchange Agreements of the General Agreement on Tariffs and Trade, all contracting parties ‘‘shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor by trade action, the intent of the Articles of Agreement of the International Monetary Fund’’. Such actions are actionable violations. The intent of the General Agreement on Tariffs and Trade Exchange Agreement, as stated in the preamble of that Agreement, includes the objective of ‘‘entering into reciprocal and mutually advantageous arrangements directed to substantial reduction of tariffs and other barriers to trade,’’ and currency manipulation may constitute a trade barrier disruptive to reciprocal and mutually advantageous trade arrangements.

(18) Deliberate currency manipulation by nations to significantly undervalue their currencies also may be interpreted as a violation of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization (as described in section 101(d)(12)) of the Uruguay Round Agreements Act, which could lead to action and remedy under the World Trade Organization dispute settlement procedures.

(19) Deliberate, large-scale intervention by governments in currency markets to significantly undervalue their currencies may be a nullification and impairment of trade benefits precluded under Article XXIII of the General Agreement on Tariffs and Trade, and subject to remedy.

(20) The United States Trade Representative also has authority to pursue remedial actions under section 301 of the Trade Act of 1974.

(21) The United States has special rights to take action to redress market disruption under section 406 of the Trade Act of 1974 adopted pursuant to the provisions of the United States-China Bilateral Agreement on World Trade Organization Accession.

(22) While large-scale manipulation of currencies by certain major trading partners to achieve an unfair competitive advantage is one of the most pervasive barriers faced by the manufacturing sector in the United States, other factors are contributing to the decline of manufacturing and small and mid-sized manufacturing firms in the United States, including but not limited to non-tariff trade barriers, lax enforcement of existing trade agreements, and

weak or underutilized government support for trade promotion.

SEC. 3. NEGOTIATION PERIOD REGARDING CURRENCY NEGOTIATIONS.

Beginning on the date of enactment of this Act, the President shall begin bilateral and multilateral negotiations for a 90-day period with those governments of nations determined to be engaged most egregiously in currency manipulation, as defined in section 7, to seek a prompt and orderly end to such currency manipulation and to ensure that the currencies of these countries are freely traded on international currency markets, or are established at a level that reflects a more appropriate and accurate market value. The President shall seek support in this process from international agencies and other nations and regions adversely affected by these currency practices.

SEC. 4. FINDINGS OF FACT AND REPORT REGARDING CURRENCY MANIPULATION.

(a) IN GENERAL.—During the 90-day negotiation period described in section 3, the International Trade Commission shall—

(1) ascertain and develop the full facts and details concerning how countries have acted to manipulate their currencies to increase their exports to the

United States and limit their imports of United States products;

(2) quantify the extent of this currency manipulation;

(3) examine in detail how these currency practices have affected and will continue to affect United States manufacturers and United States trade levels, both for imports and exports;

(4) review whether and to what extent reduction of currency manipulation and the accumulation of dollar-denominated currency reserves and public debt instruments might adversely affect United States interest rates and public debt financing;

(5) make a determination of any and all available mechanisms for redress under applicable international trade treaties and agreements, including the Articles of Agreement of the International Monetary Fund, the General Agreement on Tariffs and Trade, the World Trade Organization Agreements, and United States trade laws; and

(6) undertake other appropriate evaluations of the issues described in paragraphs (1) through (5).

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the International Trade Commission shall provide a detailed report to the President, the

United States Trade Representative, the Secretary of the Treasury, and the appropriate congressional committees on the findings made as a result of the reviews undertaken under paragraphs (1) through (6) of subsection (a).

SEC. 5. INSTITUTE PROCEEDINGS REGARDING CURRENCY MANIPULATION.

At the end of the 90-day negotiation period provided for in section 3, if agreements are not reached by the President to promptly end currency manipulation, the President shall institute proceedings under the relevant provisions of international law and United States trade laws including sections 301 and 406 of the Trade Act of 1974 with respect to those countries that, based on the findings of the International Trade Commission under section 4, continue to engage in the most egregious currency manipulation. In addition to seeking a prompt end to currency manipulation, the President shall seek appropriate damages and remedies for the Nation's manufacturers and other affected parties. If the President does not institute action, the President shall, not later than 120 days after the date of enactment of this Act, provide to the appropriate congressional committees a detailed explanation and accounting of precisely why the President has determined not to institute action.

SEC. 6. ADDITIONAL REPORTS AND RECOMMENDATIONS.

(a) NATIONAL SECURITY.—Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide a detailed report to the appropriate congressional committees evaluating the effects on our national security of countries engaging in significant currency manipulations, and the effect of such manipulation on critical manufacturing sectors.

(b) OTHER UNFAIR TRADE PRACTICES.—Within 90 days of the date of enactment of this Act, the United States Trade Representative and the International Trade Commission shall evaluate and report in detail to the appropriate congressional committees on other trade practices and trade barriers by major East Asian trading nations potentially in violation of international trade agreements, including the practice of maintaining a value-added or other tax regime that effectively discriminates against imports by underpricing domestically produced goods, or setting technology standards that effectively limit imports.

(c) TRADE ENFORCEMENT.—Within 90 days of the date of enactment of this Act, the United States Trade Representative and the International Trade Commission shall report in detail to the appropriate congressional committees on steps that could be taken to significantly improve trade enforcement efforts against unfair trade practices by competitor trading nations, including making recommendations for additional support for trade enforcement efforts.

(d) TRADE PROMOTION.—Within 90 days of the date of enactment of this Act, the Secretaries of State and Commerce, and the United States Trade Representative, shall prepare a detailed report with recommendations on steps that could be undertaken to significantly improve trade promotion for United States goods and services, including recommendations on additional support to improve trade promotion.

SEC. 7. CURRENCY MANIPULATION DEFINED.

In this Act, the term ''currency manipulation'' means—

(1) large-scale manipulation of exchange rates by a nation in order to gain an unfair competitive advantage as stated in Article IV of the Articles of Agreement of the International Monetary Fund and related surveillance provisions;

(2) sustained, large-scale currency intervention in one direction, through mandatory foreign exchange sales at a nation's central bank at a fixed exchange rate; or

(3) other mechanisms, used to maintain a currency at a fixed exchange rate relative to another currency.

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